

COMMITTEE STATEMENT

LB 1119

HEARING DATE: January 25, 2000

COMMITTEE ON: Banking, Commerce, and Insurance

TITLE: (Landis) Adopt the Property and Casualty Insurance Rate and Form Act and eliminate related acts

ROLL CALL VOTE – FINAL COMMITTEE ACTION

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

Vote Results:

6 Yes Senators Landis, Tyson, Aguilar, Jensen, Kremer,
Schmitt

No

Present, not voting

2 Absent Senators Bourne, Bruning

PROPONENTS

Senator David Landis

Tim Wagner, Director

David Tideman

Janis McKenzie

Joe Elliott

REPRESENTING

Introducer

NE Dept. of Insurance

State Farm Insurance Companies

NE Insurance Federation

Professional Insurance Agents Assn.

OPPONENTS

REPRESENTING

NEUTRAL

Ted Fraizer

Joseph Termini

REPRESENTING

American Insurance Association

NAII

SUMMARY OF PURPOSE AND/OR CHANGES:

LB 1119 (Landis), introduced at the request of the Department of Insurance, would enact a new Property and Casualty Insurance Rate and Form Act. The bill provides, section by section as follows:

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- Section 1. Adopts the Property and Casualty Insurance Rate and Form Act, replacing the current, identically named, Chapter 44, article 50.
- Section 2. Enumerates purposes of the Act, including the regulation of insurance forms, promotion of competition, and protection of policyholders and the public against excessive rates and the adverse effects of inadequate or unfairly discriminatory rates. This section is similar to existing §44-5002.
- Section 3. Forbids interpretations of the Act that would discourage competition or require uniformity, except to the extent necessary to accomplish the purposes of the Act. This section is identical to existing §44-5003.
- Section 4. Defines terms. This section is similar to existing §§44-5004 to 44-5017.
- Section 5. Specifies the lines of insurance to which the Act applies. Includes insurance other than property insurance for domestic assessment associations as well as surety forms and rates developed by advisory organizations. Narrows existing law by excluding rates and forms used for warranties or service contracts, rates and forms for financial guaranty insurance, and rates and forms for contracts of suretyship, except for suretyship contracts developed by an advisory organization. This section is similar to existing §44-5018.
- Section 6. Requires filing of insurance rates and rate-related materials with the department. Subjects rates for insurance covering farms, workers' compensation, medical professional liability, all forms of personal insurance, and rate-related materials filed by advisory organizations to prior approval of insurance rates and forms. Specifies that rates for commercial insurance other than farm, workers' compensation, and medical professional liability are made subject to the file and use provisions of Sections 8 and 9, which primarily rely upon competition to maintain fair and reasonable rates. If an insurer frequently abuses the regulatory reductions offered by the file and use provisions, this section requires the insurer to have its rate filings made subject to Sections 10 and 11.
- Section 7. Requires that the department monitor competition and the availability of commercial insurance. If the Director of Insurance finds that a commercial insurance coverage is contributing to problems in the insurance marketplace due to excessive rates or lack of availability, this section requires the director to report this finding to the Legislature. If the director finds that competition sufficient to warrant reliance upon competition as a regulator of rating systems does not exist in the market, this section allows the director to take remedial action in accordance with the Act. Such remedial action may include the imposition of the stricter filing requirements found in Sections 10 and 11.

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- Section 8. Applies a “file and use” filing requirement to commercial insurance rates except for farm, workers’ compensation, and medical professional liability insurance. Retains current requirement that insurers file rates before they are used. Allows insurers to use rates immediately upon filing, rather than being required to wait for review by the department. Restricts the grounds under which a rate will be disapproved to those rates that are inadequate or those which discriminate based on race, ethnicity, religion, or domestic abuse.
- Section 9. For insurance subject to section 8, allows insurers to increase or decrease premiums on an individual risk basis up to forty percent based on subjective rating factors. Grants the director authority to increase range of rating flexibility.
- Section 10. Sets forth the approval standards for rates filed under Section 11. Forbids rates for insurance products subject to this section that are excessive, inadequate or unfairly discriminatory. Sets standard for excessive rate as one that is likely to produce a profit that is unreasonably high for the insurance provided or expenses are unreasonably high in relation to services rendered. Sets standard of an inadequate rate as one that would endanger the solvency of the insurer, or not be expected to generate a profit on a direct basis and would be likely to have the effect of diminishing competition. Sets standard for unfair discrimination which continues to allow administrative interpretation, and sets forth certain activities that are per se unfairly discriminatory. Specifically, rate discrimination on optional higher or lower commissions for agents, rate discrimination based upon race, creed, national origin, or religion of the insured, or in violation of the Unfair Discrimination Against Subjects of Abuse in Insurance Act are unfairly discriminatory per se. Specifically allowed discriminations include lower rates for mass-marketed insurance programs and different rates for insurance marketed via the Internet.
- Section 11. Sets forth the “prior approval” rate filing procedures for personal lines, farm, workers’ compensation, and medical professional liability insurance, and for rate filings made by advisory organizations. With two exceptions, its provisions operate in the same manner as current law. First, the consent-to-rate provisions for workers’ compensation track the consent-to-rate provisions for other commercial lines, which provide that prior approval by the department of policyholder-agreed surcharged rates is unnecessary. Second, requires insurers to keep track of approved filings.
- Section 12. Prohibits subjective rating except as allowed by Section 9. Allows and sets forth procedure for the director to issue a one-time disapproval of filings that do not comply with the provisions contained in Sections 8 and 10.

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- Section 13. Requires property and casualty insurance forms to be filed with and approved by the department before use. Clarifies and narrows provisions of the prior law allowing an exception for manuscript forms used on an occasional basis for individual policyholders. Restricts use of this exception to commercial lines.
- Section 14. Specifies that policies issued by insurers writing policyholders that have larger premiums generated by their exposures in a state other than Nebraska are not required to file such forms or comply with specific sections of Nebraska law. Laws for which such exemption may apply are §§44-349, 44-350, 44-501, 44-514 to 44-518, 44-520 to 44-523, and 44-6408 and the provision of §44-601 that prohibits policies with a term longer than five years.
- Section 15. Requires the director to adopt rules and regulations exempting insurers from the applicability of rate and form filing requirements for large commercial policyholders for which it is reasonable to expect a sufficient degree of sophistication and substantial bargaining power. Sets standards for the director's determination of qualifications at a higher threshold for forms deregulation than for rate deregulation. Specifies that deregulation does not extend to coverage provisions for workers' compensation or medical professional liability coverage necessary to qualify under the Hospital-Medical Liability Act, and it does not allow automobile insurance coverage limits to be less than those otherwise provided by Nebraska law. Specifies that policyholders with less than \$25,000 in premium may not be exempted from rate regulation and that policyholders with less than \$50,000 in premium may not be exempted from forms regulation.
- Section 16. Requires the director to exempt large commercial policyholders from the provisions of §§44-5510 and 44-5511 requiring that, to purchase insurance from a nonadmitted insurer, applicants must be unable to obtain insurance from a licensed insurer. Specifies that this section does not apply to workers' compensation insurance, excess workers' compensation insurance, or automobile liability insurance, or to policyholders with less than \$100,000 in premium.
- Section 17. Requires insurers to provide to an insured information pertinent to the rates affecting that insured upon request. This section is identical to existing §44-5022.
- Section 18. Sets forth procedure for the licensing of advisory organizations and statistical agents. This section is similar to existing §44-5023, except that certificate of authority may be limited to specified lines of insurance.

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- Section 19. Prohibits marketplace collusion between insurers that are not financially affiliated. This section is similar to existing §44-5024.
- Section 20. Prohibits advisory organizations and statistical agents from making recommendations to insurers relating to profits, dividends, and expenses. This section is similar to existing §44-5025.
- Section 21. Sets forth permitted activities of a statistical agent. This section is similar to existing §44-5026, except that this section lists only those activities relevant to a statistical agent.
- Section 22. Sets forth permitted activities of an advisory organization. Allows advisory organizations to engage in the statistical activities enumerated in Section 21. This section is similar to existing §44-5026.
- Section 23. Specifies that advisory organizations are subject to the same filing requirements as insurers, except that all advisory organization filings are subject to Sections 10 and 11, while some insurer rate filings are subject to the filing requirements contained in Section 8. This section is similar to existing §44-5027.
- Section 24. Provides a few special provisions for workers' compensation that are essentially the same as were contained in §44-5028. The differences are that the current law refers to a single experience rating plan filed by an advisory organization; the bill allows a second advisory organization to file a different experience rating plan. In addition, current law requires the department to undertake a study relating to high-wage-paying employers and act upon it; in fact, the study was undertaken and acted upon over 5 years ago. As such, the unnecessary language is being deleted, but the applicable standards will remain the same, which means that the solution developed after the study will remain in place.
- Section 25. Sets forth the standards and procedures for the regulation of joint underwriting and joint reinsurance pools. This section is similar to existing §44-5029.
- Section 26. Allows the examination of advisory organizations, statistical agents, joint underwriting pools, and joint reinsurance associations. This section is similar to existing §44-5030 except that it requires such organizations to provide the Director with a copy of examinations undertaken by other jurisdictions within 30 days of their completion.

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- Section 27. Requires insurers to report statistics to the department so that the department can determine whether rates charged by insurers comply with the Act. This section is similar to existing §44-5031. Forbids the department from disclosing insurer-specific statistical information. Specifies that this provision does not apply to data received by the department in any fashion other than in statistical reports made pursuant to this section.
- Section 28. This section authorizes but does not require assigned risk plans. This section is identical to existing §44-5032.
- Section 29. This section prohibits the willful withholding or giving of false information. This section is identical to existing §44-5034.
- Section 30. Sets forth violations and penalties of the Act. This section is identical to existing §44-5035.
- Section 31. Allows parties aggrieved by an action of the director to request a hearing. This section is identical to existing §44-5036.
- Section 32. Sets forth hearing procedures. This section is identical to existing §44-5037.
- Section 33. Grants parties aggrieved by an action of the director to appeal orders of the director issued pursuant to the Act. This section is identical to existing §44-5038.
- Section 34. Allows the director to make reasonable arrangements to allow or facilitate use of the Internet or other electronic media to make filings or to engage in correspondence required by the Act.
- Section 35. Grants the director authority to promulgate rules and regulations to carry out the Act. Except for the provision that such rules shall not be effective before January 1, 2001, this section is identical to existing §44-5039.
- Section 36. Conforming amendment.
- Section 37. Conforming amendment.
- Section 38. Conforming amendment.
- Section 39. Conforming amendment.
- Section 40. Conforming amendment.
- Section 41. Severability clause.

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Section 42. Specifies operative date of January 1, 2001, except that Sections 12, 35 and 42 shall become operative on their effective date. These sections allow or require the director to adopt rules and regulations to implement the Act.

Section 43. Repeals original sections amended in Sections 36 to 40.

Section 44. Outright repeals original Property and Casualty Insurance Rate and Form Act and Property and Casualty Insurance Data Reporting Act.

EXPLANATION OF AMENDMENTS, IF ANY:

The committee amendments would amend sections 8 and 11 to strike provisions which allow the Director of Insurance to request justification by insurers of their use of prospective loss cost filings by advisory organizations.

The committee amendments would amend section 13 to change provisions which require notification of and acknowledgment by a prospective insured in the case of policy provisions not approved by the director. The amendments would require that an insurer shall provide a prospective insured “a written listing of the policy forms” rather than “an itemization of the policy provisions” that have not been approved by the director.

The committee amendments would amend section 14 to provide that policy form approval requirements of the bill shall not apply to policies written for individual commercial risks “headquartered” rather than “primarily located” in this state as determined by rule and regulation. To determine whether a commercial risk is “headquartered” in this state, the rules and regulations shall primarily consider “where the largest number of officers and senior management are physically located.”

Senator David Landis